

By: Representative Dedeaux

To: Appropriations

HOUSE BILL NO. 1591

1 AN ACT TO AMEND SECTIONS 31-3-21 AND 31-7-13, MISSISSIPPI
 2 CODE OF 1972, TO REQUIRE CONTRACTORS WHO SUBMIT A BID IN EXCESS OF
 3 \$100,000.00 TO LIST SUBCONTRACTORS WHO WILL WORK UNDER THE
 4 CONTRACT; TO PROHIBIT STATE AGENCIES AND GOVERNING AUTHORITIES
 5 FROM ACCEPTING BIDS IN EXCESS OF \$100,000.00 WITHOUT A LIST OF
 6 SUBCONTRACTORS WHO WILL WORK UNDER THE CONTRACT; TO PROHIBIT
 7 CONTRACTORS FROM CHANGING THE LISTED SUBCONTRACTOR WITHOUT THE
 8 APPROVAL OF THE AGENCY OR GOVERNING AUTHORITY; TO ALLOW STATE
 9 AGENCIES AND GOVERNING AUTHORITIES TO USE PROJECT MANAGERS FOR
 10 CERTAIN PROJECTS; TO AMEND SECTION 37-151-7, MISSISSIPPI CODE OF
 11 1972, TO CONFORM TO THE PRECEDING SECTIONS; AND FOR RELATED
 12 PURPOSES.

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

14 **SECTION 1.** Section 31-3-21, Mississippi Code of 1972, is
 15 amended as follows:

16 31-3-21. (1) It shall be unlawful for any person who does
 17 not hold a certificate of responsibility issued under this
 18 chapter, or a similar certificate issued by another state
 19 recognizing such certificate issued by the State of Mississippi,
 20 to submit a bid, enter into a contract, or otherwise engage in or
 21 continue in this state in the business of a contractor, as defined
 22 in this chapter. Any bid which is submitted without a certificate
 23 of responsibility number issued under this chapter and without
 24 that number appearing on the exterior of the bid envelope, as and
 25 if herein required, at the time designated for the opening of such
 26 bid, shall not be considered further, and the person or public
 27 agency soliciting bids shall not enter into a contract with a
 28 contractor submitting a bid in violation of this section. In
 29 addition, any person violating this section by knowingly and
 30 willfully submitting a bid for projects without holding a
 31 certificate of responsibility number issued under this chapter, as
 32 and if herein required, at the time of the submission or opening

33 of such bid shall be guilty of a misdemeanor and, upon conviction,
34 shall be punished by a fine of not more than One Thousand Dollars
35 (\$1,000.00), or by imprisonment for not more than six (6) months,
36 or by both such fine and imprisonment.

37 (2) (a) All bids submitted for public or private projects
38 where said bid is in excess of Fifty Thousand Dollars (\$50,000.00)
39 with respect to public projects and in excess of One Hundred
40 Thousand Dollars (\$100,000.00) with respect to private projects
41 shall contain on the outside or exterior of the envelope or
42 container of such bid the contractor's current certificate number,
43 and no bid shall be opened or considered unless such contractor's
44 current certificate number appears on the outside or exterior of
45 said envelope or container, or unless there appears a statement on
46 the outside or exterior of such envelope or container to the
47 effect that the bid enclosed therewith did not exceed Fifty
48 Thousand Dollars (\$50,000.00) with respect to public projects or
49 One Hundred Thousand Dollars (\$100,000.00) with respect to private
50 projects. Any person violating the provisions of this subsection
51 shall be guilty of a misdemeanor and, upon conviction, shall be
52 punished by a fine of not more than One Thousand Dollars
53 (\$1,000.00), or by imprisonment for not more than six (6) months,
54 or by both such fine and imprisonment.

55 (b) All bids submitted for public projects where said
56 bid is in excess of One Hundred Thousand Dollars (\$100,000.00)
57 shall contain a list of subcontractors who will work under the
58 contract. The subcontractors listed may not be changed by the
59 contractor without the approval of the agency or governing
60 authority for which the public project is being done. A civil
61 penalty equal to three percent (3%) of the total value of the
62 contract shall be assessed against a contractor who uses any
63 subcontractor other than the subcontractors listed by the
64 contractor during the bidding process. The civil penalty shall be
65 collected by the agency or governing authority for which the work

66 is being done and shall be used by such agency or governing
67 authority.

68 (3) In the letting of public contracts preference shall be
69 given to resident contractors, and a nonresident bidder domiciled
70 in a state having laws granting preference to local contractors
71 shall be awarded Mississippi public contracts only on the same
72 basis as the nonresident bidder's state awards contracts to
73 Mississippi contractors bidding under similar circumstances; and
74 resident contractors actually domiciled in Mississippi, be they
75 corporate, individuals, or partnerships, are to be granted
76 preference over nonresidents in awarding of contracts in the same
77 manner and to the same extent as provided by the laws of the state
78 of domicile of the nonresident. When a nonresident contractor
79 submits a bid for a public project, he shall attach thereto a copy
80 of his resident state's current law pertaining to such state's
81 treatment of nonresident contractors. As used in this section,
82 the term "resident contractors" includes a nonresident person,
83 firm or corporation that has been qualified to do business in this
84 state and has maintained a permanent full-time office in the State
85 of Mississippi for two (2) years prior to January 1, 1986, and the
86 subsidiaries and affiliates of such a person, firm or corporation.
87 Any public agency awarding a contract shall promptly report to the
88 State Tax Commission the following information:

89 (a) The amount of the contract.

90 (b) The name and address of the contractor reviewing
91 the contract.

92 (c) The name and location of the project.

93 (4) In addition to any other penalties provided in this
94 chapter, and upon a finding of a violation of this chapter, the
95 State Board of Contractors may, after notice and hearing, issue an
96 order of abatement directing the contractor to cease all actions
97 constituting violations of this chapter until such time as the
98 contractor complies with Mississippi state law, and to pay to the

99 board a civil penalty to be deposited into the State Board of
100 Contractors' Fund, created in Section 31-3-17, of not more than
101 three percent (3%) of the total contract being performed by the
102 contractor. The funds collected from civil penalty payments shall
103 be used by the State Board of Contractors for enforcement and
104 education.

105 **SECTION 2.** Section 31-7-13, Mississippi Code of 1972, is
106 amended as follows:

107 31-7-13. All agencies and governing authorities shall
108 purchase their commodities and printing; contract for garbage
109 collection or disposal; contract for solid waste collection or
110 disposal; contract for sewage collection or disposal; contract for
111 public construction; and contract for rentals as herein provided.

112 (a) **Bidding procedure for purchases not over \$3,500.00.**
113 Purchases which do not involve an expenditure of more than Three
114 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
115 shipping charges, may be made without advertising or otherwise
116 requesting competitive bids. However, nothing contained in this
117 paragraph (a) shall be construed to prohibit any agency or
118 governing authority from establishing procedures which require
119 competitive bids on purchases of Three Thousand Five Hundred
120 Dollars (\$3,500.00) or less.

121 (b) **Bidding procedure for purchases over \$3,500.00 but**
122 **not over \$15,000.00.** Purchases which involve an expenditure of
123 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
124 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
125 freight and shipping charges may be made from the lowest and best
126 bidder without publishing or posting advertisement for bids,
127 provided at least two (2) competitive written bids have been
128 obtained. Any governing authority purchasing commodities pursuant
129 to this paragraph (b) may authorize its purchasing agent, or his
130 designee, with regard to governing authorities other than
131 counties, or its purchase clerk, or his designee, with regard to

132 counties, to accept the lowest and best competitive written bid.
133 Such authorization shall be made in writing by the governing
134 authority and shall be maintained on file in the primary office of
135 the agency and recorded in the official minutes of the governing
136 authority, as appropriate. The purchasing agent or the purchase
137 clerk, or their designee, as the case may be, and not the
138 governing authority, shall be liable for any penalties and/or
139 damages as may be imposed by law for any act or omission of the
140 purchasing agent or purchase clerk, or their designee,
141 constituting a violation of law in accepting any bid without
142 approval by the governing authority. The term "competitive
143 written bid" shall mean a bid submitted on a bid form furnished by
144 the buying agency or governing authority and signed by authorized
145 personnel representing the vendor, or a bid submitted on a
146 vendor's letterhead or identifiable bid form and signed by
147 authorized personnel representing the vendor. "Competitive" shall
148 mean that the bids are developed based upon comparable
149 identification of the needs and are developed independently and
150 without knowledge of other bids or prospective bids. Bids may be
151 submitted by facsimile, electronic mail or other generally
152 accepted method of information distribution. Bids submitted by
153 electronic transmission shall not require the signature of the
154 vendor's representative unless required by agencies or governing
155 authorities.

156 (c) **Bidding procedure for purchases over \$15,000.00.**

157 (i) **Publication requirement.** Purchases which
158 involve an expenditure of more than Fifteen Thousand Dollars
159 (\$15,000.00), exclusive of freight and shipping charges, may be
160 made from the lowest and best bidder after advertising for
161 competitive sealed bids once each week for two (2) consecutive
162 weeks in a regular newspaper published in the county or
163 municipality in which such agency or governing authority is
164 located. The date as published for the bid opening shall not be

165 less than seven (7) working days after the last published notice;
166 however, if the purchase involves a construction project in which
167 the estimated cost is in excess of Fifteen Thousand Dollars
168 (\$15,000.00), such bids shall not be opened in less than fifteen
169 (15) working days after the last notice is published and the
170 notice for the purchase of such construction shall be published
171 once each week for two (2) consecutive weeks. The notice of
172 intention to let contracts or purchase equipment shall state the
173 time and place at which bids shall be received, list the contracts
174 to be made or types of equipment or supplies to be purchased, and,
175 if all plans and/or specifications are not published, refer to the
176 plans and/or specifications on file. If there is no newspaper
177 published in the county or municipality, then such notice shall be
178 given by posting same at the courthouse, or for municipalities at
179 the city hall, and at two (2) other public places in the county or
180 municipality, and also by publication once each week for two (2)
181 consecutive weeks in some newspaper having a general circulation
182 in the county or municipality in the above provided manner. On
183 the same date that the notice is submitted to the newspaper for
184 publication, the agency or governing authority involved shall mail
185 written notice to, or provide electronic notification to the main
186 office of the Mississippi Contract Procurement Center that
187 contains the same information as that in the published notice.

188 (ii) **Bidding process amendment procedure.** If all
189 plans and/or specifications are published in the notification,
190 then the plans and/or specifications may not be amended. If all
191 plans and/or specifications are not published in the notification,
192 then amendments to the plans/specifications, bid opening date, bid
193 opening time and place may be made, provided that the agency or
194 governing authority maintains a list of all prospective bidders
195 who are known to have received a copy of the bid documents and all
196 such prospective bidders are sent copies of all amendments. This
197 notification of amendments may be made via mail, facsimile,

198 electronic mail or other generally accepted method of information
199 distribution. No addendum to bid specifications may be issued
200 within two (2) working days of the time established for the
201 receipt of bids unless such addendum also amends the bid opening
202 to a date not less than five (5) working days after the date of
203 the addendum.

204 (iii) **Filing requirement.** In all cases involving
205 governing authorities, before the notice shall be published or
206 posted, the plans or specifications for the construction or
207 equipment being sought shall be filed with the clerk of the board
208 of the governing authority. In addition to these requirements, a
209 bid file shall be established which shall indicate those vendors
210 to whom such solicitations and specifications were issued, and
211 such file shall also contain such information as is pertinent to
212 the bid.

213 (iv) **Specification restrictions.** Specifications
214 pertinent to such bidding shall be written so as not to exclude
215 comparable equipment of domestic manufacture. However, if valid
216 justification is presented, the Department of Finance and
217 Administration or the board of a governing authority may approve a
218 request for specific equipment necessary to perform a specific
219 job. Further, such justification, when placed on the minutes of
220 the board of a governing authority, may serve as authority for
221 that governing authority to write specifications to require a
222 specific item of equipment needed to perform a specific job. In
223 addition to these requirements, from and after July 1, 1990,
224 vendors of relocatable classrooms and the specifications for the
225 purchase of such relocatable classrooms published by local school
226 boards shall meet all pertinent regulations of the State Board of
227 Education, including prior approval of such bid by the State
228 Department of Education.

229 (v) Agencies and governing authorities may
230 establish secure procedures by which bids may be submitted via
231 electronic means.

232 (vi) **Bids in excess of One Hundred Thousand**
233 **Dollars (\$100,000.00)**. In addition to other procedures for
234 purchases over Fifteen Thousand Dollars (\$15,000.00), a contractor
235 who submits a bid in excess of One Hundred Thousand Dollars
236 (\$100,000.00) shall list the subcontractors who will work under
237 the contract. No bid in excess of One Hundred Thousand Dollars
238 (\$100,000.00) shall be accepted without a list of the
239 subcontractors who will work under the contract. The
240 subcontractors listed may not be changed by the contractor without
241 the approval of the agency or governing authority for which the
242 public project is being done. A civil penalty equal to three
243 percent (3%) of the total value of the contract shall be assessed
244 against a contractor who uses any subcontractor other than the
245 subcontractors listed by the contractor during the bidding
246 process. The civil penalty shall be collected by the agency or
247 governing authority for which the work is being done and shall be
248 used by such agency or governing authority.

249 (vii) **Project management.** Any public project with
250 an estimated project cost of more than Twenty-Five Million Dollars
251 (\$25,000,000.00) may be done with program management of the
252 process with respect to design and construction. No project
253 management of the process with respect to design and construction
254 shall be used for any project with an estimated project cost of
255 less than Twenty-five Million Dollars (\$25,000,000.00). Any
256 individuals, partnerships, companies or other entities acting as a
257 program manager on behalf of an agency or governing authority and
258 performing program management services for projects covered under
259 this paragraph shall be approved by the State Department of
260 Education.

261 (d) **Lowest and best bid decision procedure.**

262 (i) **Decision procedure.** Purchases may be made
263 from the lowest and best bidder. In determining the lowest and
264 best bid, freight and shipping charges shall be included.
265 Life-cycle costing, total cost bids, warranties, guaranteed
266 buy-back provisions and other relevant provisions may be included
267 in the best bid calculation. All best bid procedures for state
268 agencies must be in compliance with regulations established by the
269 Department of Finance and Administration. If any governing
270 authority accepts a bid other than the lowest bid actually
271 submitted, it shall place on its minutes detailed calculations and
272 narrative summary showing that the accepted bid was determined to
273 be the lowest and best bid, including the dollar amount of the
274 accepted bid and the dollar amount of the lowest bid. No agency
275 or governing authority shall accept a bid based on items not
276 included in the specifications.

277 (ii) **Construction project negotiations authority.**
278 If the lowest and best bid is not more than ten percent (10%)
279 above the amount of funds allocated for a public construction or
280 renovation project, then the agency or governing authority shall
281 be permitted to negotiate with the lowest bidder in order to enter
282 into a contract for an amount not to exceed the funds allocated.

283 (e) **Lease-purchase authorization.** For the purposes of
284 this section, the term "equipment" shall mean equipment, furniture
285 and, if applicable, associated software and other applicable
286 direct costs associated with the acquisition. Any lease-purchase
287 of equipment which an agency is not required to lease-purchase
288 under the master lease-purchase program pursuant to Section
289 31-7-10 and any lease-purchase of equipment which a governing
290 authority elects to lease-purchase may be acquired by a
291 lease-purchase agreement under this paragraph (e). Lease-purchase
292 financing may also be obtained from the vendor or from a
293 third-party source after having solicited and obtained at least
294 two (2) written competitive bids, as defined in paragraph (b) of

295 this section, for such financing without advertising for such
296 bids. Solicitation for the bids for financing may occur before or
297 after acceptance of bids for the purchase of such equipment or,
298 where no such bids for purchase are required, at any time before
299 the purchase thereof. No such lease-purchase agreement shall be
300 for an annual rate of interest which is greater than the overall
301 maximum interest rate to maturity on general obligation
302 indebtedness permitted under Section 75-17-101, and the term of
303 such lease-purchase agreement shall not exceed the useful life of
304 equipment covered thereby as determined according to the upper
305 limit of the asset depreciation range (ADR) guidelines for the
306 Class Life Asset Depreciation Range System established by the
307 Internal Revenue Service pursuant to the United States Internal
308 Revenue Code and regulations thereunder as in effect on December
309 31, 1980, or comparable depreciation guidelines with respect to
310 any equipment not covered by ADR guidelines. Any lease-purchase
311 agreement entered into pursuant to this paragraph (e) may contain
312 any of the terms and conditions which a master lease-purchase
313 agreement may contain under the provisions of Section 31-7-10(5),
314 and shall contain an annual allocation dependency clause
315 substantially similar to that set forth in Section 31-7-10(8).
316 Each agency or governing authority entering into a lease-purchase
317 transaction pursuant to this paragraph (e) shall maintain with
318 respect to each such lease-purchase transaction the same
319 information as required to be maintained by the Department of
320 Finance and Administration pursuant to Section 31-7-10(13).
321 However, nothing contained in this section shall be construed to
322 permit agencies to acquire items of equipment with a total
323 acquisition cost in the aggregate of less than Ten Thousand
324 Dollars (\$10,000.00) by a single lease-purchase transaction. All
325 equipment, and the purchase thereof by any lessor, acquired by
326 lease-purchase under this paragraph and all lease-purchase
327 payments with respect thereto shall be exempt from all Mississippi

328 sales, use and ad valorem taxes. Interest paid on any
329 lease-purchase agreement under this section shall be exempt from
330 State of Mississippi income taxation.

331 (f) **Alternate bid authorization.** When necessary to
332 ensure ready availability of commodities for public works and the
333 timely completion of public projects, no more than two (2)
334 alternate bids may be accepted by a governing authority for
335 commodities. No purchases may be made through use of such
336 alternate bids procedure unless the lowest and best bidder cannot
337 deliver the commodities contained in his bid. In that event,
338 purchases of such commodities may be made from one (1) of the
339 bidders whose bid was accepted as an alternate.

340 (g) **Construction contract change authorization.** In the
341 event a determination is made by an agency or governing authority
342 after a construction contract is let that changes or modifications
343 to the original contract are necessary or would better serve the
344 purpose of the agency or the governing authority, such agency or
345 governing authority may, in its discretion, order such changes
346 pertaining to the construction that are necessary under the
347 circumstances without the necessity of further public bids;
348 provided that such change shall be made in a commercially
349 reasonable manner and shall not be made to circumvent the public
350 purchasing statutes. In addition to any other authorized person,
351 the architect or engineer hired by an agency or governing
352 authority with respect to any public construction contract shall
353 have the authority, when granted by an agency or governing
354 authority, to authorize changes or modifications to the original
355 contract without the necessity of prior approval of the agency or
356 governing authority when any such change or modification is less
357 than one percent (1%) of the total contract amount. The agency or
358 governing authority may limit the number, manner or frequency of
359 such emergency changes or modifications.

360 (h) **Petroleum purchase alternative.** In addition to
361 other methods of purchasing authorized in this chapter, when any
362 agency or governing authority shall have a need for gas, diesel
363 fuel, oils and/or other petroleum products in excess of the amount
364 set forth in paragraph (a) of this section, such agency or
365 governing authority may purchase the commodity after having
366 solicited and obtained at least two (2) competitive written bids,
367 as defined in paragraph (b) of this section. If two (2)
368 competitive written bids are not obtained, the entity shall comply
369 with the procedures set forth in paragraph (c) of this section.
370 In the event any agency or governing authority shall have
371 advertised for bids for the purchase of gas, diesel fuel, oils and
372 other petroleum products and coal and no acceptable bids can be
373 obtained, such agency or governing authority is authorized and
374 directed to enter into any negotiations necessary to secure the
375 lowest and best contract available for the purchase of such
376 commodities.

377 (i) **Road construction petroleum products price**
378 **adjustment clause authorization.** Any agency or governing
379 authority authorized to enter into contracts for the construction,
380 maintenance, surfacing or repair of highways, roads or streets,
381 may include in its bid proposal and contract documents a price
382 adjustment clause with relation to the cost to the contractor,
383 including taxes, based upon an industry-wide cost index, of
384 petroleum products including asphalt used in the performance or
385 execution of the contract or in the production or manufacture of
386 materials for use in such performance. Such industry-wide index
387 shall be established and published monthly by the Mississippi
388 Department of Transportation with a copy thereof to be mailed,
389 upon request, to the clerks of the governing authority of each
390 municipality and the clerks of each board of supervisors
391 throughout the state. The price adjustment clause shall be based
392 on the cost of such petroleum products only and shall not include

393 any additional profit or overhead as part of the adjustment. The
394 bid proposals or document contract shall contain the basis and
395 methods of adjusting unit prices for the change in the cost of
396 such petroleum products.

397 (j) **State agency emergency purchase procedure.** If the
398 governing board or the executive head, or his designee, of any
399 agency of the state shall determine that an emergency exists in
400 regard to the purchase of any commodities or repair contracts, so
401 that the delay incident to giving opportunity for competitive
402 bidding would be detrimental to the interests of the state, then
403 the provisions herein for competitive bidding shall not apply and
404 the head of such agency shall be authorized to make the purchase
405 or repair. Total purchases so made shall only be for the purpose
406 of meeting needs created by the emergency situation. In the event
407 such executive head is responsible to an agency board, at the
408 meeting next following the emergency purchase, documentation of
409 the purchase, including a description of the commodity purchased,
410 the purchase price thereof and the nature of the emergency shall
411 be presented to the board and placed on the minutes of the board
412 of such agency. The head of such agency, or his designee, shall,
413 at the earliest possible date following such emergency purchase,
414 file with the Department of Finance and Administration (i) a
415 statement explaining the conditions and circumstances of the
416 emergency, which shall include a detailed description of the
417 events leading up to the situation and the negative impact to the
418 entity if the purchase is made following the statutory
419 requirements set forth in paragraph (a), (b) or (c) of this
420 section, and (ii) a certified copy of the appropriate minutes of
421 the board of such agency, if applicable. On or before September 1
422 of each year, the State Auditor shall prepare and deliver to the
423 Senate Fees, Salaries and Administration Committee, the House Fees
424 and Salaries of Public Officers Committee and the Joint
425 Legislative Budget Committee a report containing a list of all

426 state agency emergency purchases and supporting documentation for
427 each emergency purchases.

428 (k) **Governing authority emergency purchase procedure.**

429 If the governing authority, or the governing authority acting
430 through its designee, shall determine that an emergency exists in
431 regard to the purchase of any commodities or repair contracts, so
432 that the delay incident to giving opportunity for competitive
433 bidding would be detrimental to the interest of the governing
434 authority, then the provisions herein for competitive bidding
435 shall not apply and any officer or agent of such governing
436 authority having general or special authority therefor in making
437 such purchase or repair shall approve the bill presented therefor,
438 and he shall certify in writing thereon from whom such purchase
439 was made, or with whom such a repair contract was made. At the
440 board meeting next following the emergency purchase or repair
441 contract, documentation of the purchase or repair contract,
442 including a description of the commodity purchased, the price
443 thereof and the nature of the emergency shall be presented to the
444 board and shall be placed on the minutes of the board of such
445 governing authority.

446 (l) **Hospital purchase, lease-purchase and lease**
447 **authorization.**

448 (i) The commissioners or board of trustees of any
449 public hospital may contract with such lowest and best bidder for
450 the purchase or lease-purchase of any commodity under a contract
451 of purchase or lease-purchase agreement whose obligatory payment
452 terms do not exceed five (5) years.

453 (ii) In addition to the authority granted in
454 subparagraph (i) of this paragraph (l), the commissioners or board
455 of trustees is authorized to enter into contracts for the lease of
456 equipment or services, or both, which it considers necessary for
457 the proper care of patients if, in its opinion, it is not
458 financially feasible to purchase the necessary equipment or

459 services. Any such contract for the lease of equipment or
460 services executed by the commissioners or board shall not exceed a
461 maximum of five (5) years' duration and shall include a
462 cancellation clause based on unavailability of funds. If such
463 cancellation clause is exercised, there shall be no further
464 liability on the part of the lessee. Any such contract for the
465 lease of equipment or services executed on behalf of the
466 commissioners or board that complies with the provisions of this
467 subparagraph (ii) shall be excepted from the bid requirements set
468 forth in this section.

469 (m) **Exceptions from bidding requirements.** Excepted
470 from bid requirements are:

471 (i) **Purchasing agreements approved by department.**
472 Purchasing agreements, contracts and maximum price regulations
473 executed or approved by the Department of Finance and
474 Administration.

475 (ii) **Outside equipment repairs.** Repairs to
476 equipment, when such repairs are made by repair facilities in the
477 private sector; however, engines, transmissions, rear axles and/or
478 other such components shall not be included in this exemption when
479 replaced as a complete unit instead of being repaired and the need
480 for such total component replacement is known before disassembly
481 of the component; however, invoices identifying the equipment,
482 specific repairs made, parts identified by number and name,
483 supplies used in such repairs, and the number of hours of labor
484 and costs therefor shall be required for the payment for such
485 repairs.

486 (iii) **In-house equipment repairs.** Purchases of
487 parts for repairs to equipment, when such repairs are made by
488 personnel of the agency or governing authority; however, entire
489 assemblies, such as engines or transmissions, shall not be
490 included in this exemption when the entire assembly is being
491 replaced instead of being repaired.

492 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
493 of gravel or fill dirt which are to be removed and transported by
494 the purchaser.

495 (v) **Governmental equipment auctions.** Motor
496 vehicles or other equipment purchased from a federal agency or
497 authority, another governing authority or state agency of the
498 State of Mississippi, or any governing authority or state agency
499 of another state at a public auction held for the purpose of
500 disposing of such vehicles or other equipment. Any purchase by a
501 governing authority under the exemption authorized by this
502 subparagraph (v) shall require advance authorization spread upon
503 the minutes of the governing authority to include the listing of
504 the item or items authorized to be purchased and the maximum bid
505 authorized to be paid for each item or items.

506 (vi) **Intergovernmental sales and transfers.**
507 Purchases, sales, transfers or trades by governing authorities or
508 state agencies when such purchases, sales, transfers or trades are
509 made by a private treaty agreement or through means of
510 negotiation, from any federal agency or authority, another
511 governing authority or state agency of the State of Mississippi,
512 or any state agency or governing authority of another state.
513 Nothing in this section shall permit such purchases through public
514 auction except as provided for in subparagraph (v) of this
515 section. It is the intent of this section to allow governmental
516 entities to dispose of and/or purchase commodities from other
517 governmental entities at a price that is agreed to by both
518 parties. This shall allow for purchases and/or sales at prices
519 which may be determined to be below the market value if the
520 selling entity determines that the sale at below market value is
521 in the best interest of the taxpayers of the state. Governing
522 authorities shall place the terms of the agreement and any
523 justification on the minutes, and state agencies shall obtain

524 approval from the Department of Finance and Administration, prior
525 to releasing or taking possession of the commodities.

526 (vii) **Perishable supplies or food.** Perishable
527 supplies or foods purchased for use in connection with hospitals,
528 the school lunch programs, homemaking programs and for the feeding
529 of county or municipal prisoners.

530 (viii) **Single source items.** Noncompetitive items
531 available from one (1) source only. In connection with the
532 purchase of noncompetitive items only available from one (1)
533 source, a certification of the conditions and circumstances
534 requiring the purchase shall be filed by the agency with the
535 Department of Finance and Administration and by the governing
536 authority with the board of the governing authority. Upon receipt
537 of that certification the Department of Finance and Administration
538 or the board of the governing authority, as the case may be, may,
539 in writing, authorize the purchase, which authority shall be noted
540 on the minutes of the body at the next regular meeting thereafter.
541 In those situations, a governing authority is not required to
542 obtain the approval of the Department of Finance and
543 Administration.

544 (ix) **Waste disposal facility construction**
545 **contracts.** Construction of incinerators and other facilities for
546 disposal of solid wastes in which products either generated
547 therein, such as steam, or recovered therefrom, such as materials
548 for recycling, are to be sold or otherwise disposed of; however,
549 in constructing such facilities, a governing authority or agency
550 shall publicly issue requests for proposals, advertised for in the
551 same manner as provided herein for seeking bids for public
552 construction projects, concerning the design, construction,
553 ownership, operation and/or maintenance of such facilities,
554 wherein such requests for proposals when issued shall contain
555 terms and conditions relating to price, financial responsibility,
556 technology, environmental compatibility, legal responsibilities

557 and such other matters as are determined by the governing
558 authority or agency to be appropriate for inclusion; and after
559 responses to the request for proposals have been duly received,
560 the governing authority or agency may select the most qualified
561 proposal or proposals on the basis of price, technology and other
562 relevant factors and from such proposals, but not limited to the
563 terms thereof, negotiate and enter contracts with one or more of
564 the persons or firms submitting proposals.

565 (x) **Hospital group purchase contracts.** Supplies,
566 commodities and equipment purchased by hospitals through group
567 purchase programs pursuant to Section 31-7-38.

568 (xi) **Information technology products.** Purchases
569 of information technology products made by governing authorities
570 under the provisions of purchase schedules, or contracts executed
571 or approved by the Mississippi Department of Information
572 Technology Services and designated for use by governing
573 authorities.

574 (xii) **Energy efficiency services and equipment.**
575 Energy efficiency services and equipment acquired by school
576 districts, community and junior colleges, institutions of higher
577 learning and state agencies or other applicable governmental
578 entities on a shared-savings, lease or lease-purchase basis
579 pursuant to Section 31-7-14.

580 (xiii) **Municipal electrical utility system fuel.**
581 Purchases of coal and/or natural gas by municipally-owned electric
582 power generating systems that have the capacity to use both coal
583 and natural gas for the generation of electric power.

584 (xiv) **Library books and other reference materials.**
585 Purchases by libraries or for libraries of books and periodicals;
586 processed film, video cassette tapes, filmstrips and slides;
587 recorded audio tapes, cassettes and diskettes; and any such items
588 as would be used for teaching, research or other information
589 distribution; however, equipment such as projectors, recorders,

590 audio or video equipment, and monitor televisions are not exempt
591 under this subparagraph.

592 (xv) **Unmarked vehicles.** Purchases of unmarked
593 vehicles when such purchases are made in accordance with
594 purchasing regulations adopted by the Department of Finance and
595 Administration pursuant to Section 31-7-9(2).

596 (xvi) **Election ballots.** Purchases of ballots
597 printed pursuant to Section 23-15-351.

598 (xvii) **Multichannel interactive video systems.**
599 From and after July 1, 1990, contracts by Mississippi Authority
600 for Educational Television with any private educational
601 institution or private nonprofit organization whose purposes are
602 educational in regard to the construction, purchase, lease or
603 lease-purchase of facilities and equipment and the employment of
604 personnel for providing multichannel interactive video systems
605 (ITSF) in the school districts of this state.

606 (xviii) **Purchases of prison industry products.**
607 From and after January 1, 1991, purchases made by state agencies
608 or governing authorities involving any item that is manufactured,
609 processed, grown or produced from the state's prison industries.

610 (xix) **Undercover operations equipment.** Purchases
611 of surveillance equipment or any other high-tech equipment to be
612 used by law enforcement agents in undercover operations, provided
613 that any such purchase shall be in compliance with regulations
614 established by the Department of Finance and Administration.

615 (xx) **Junior college books for rent.** Purchases by
616 community or junior colleges of textbooks which are obtained for
617 the purpose of renting such books to students as part of a book
618 service system.

619 (xxi) **Certain school district purchases.**
620 Purchases of commodities made by school districts from vendors
621 with which any levying authority of the school district, as

622 defined in Section 37-57-1, has contracted through competitive
623 bidding procedures for purchases of the same commodities.

624 (xxii) **Garbage, solid waste and sewage contracts.**
625 Contracts for garbage collection or disposal, contracts for solid
626 waste collection or disposal and contracts for sewage collection
627 or disposal.

628 (xxiii) **Municipal water tank maintenance**
629 **contracts.** Professional maintenance program contracts for the
630 repair or maintenance of municipal water tanks, which provide
631 professional services needed to maintain municipal water storage
632 tanks for a fixed annual fee for a duration of two (2) or more
633 years.

634 (xxiv) **Purchases of Mississippi Industries for the**
635 **Blind products.** Purchases made by state agencies or governing
636 authorities involving any item that is manufactured, processed or
637 produced by the Mississippi Industries for the Blind.

638 (xxv) **Purchases of state-adopted textbooks.**
639 Purchases of state-adopted textbooks by public school districts.

640 (xxvi) **Certain purchases under the Mississippi**
641 **Major Economic Impact Act.** Contracts entered into pursuant to the
642 provisions of Section 57-75-9(2) and (3).

643 (xxvii) **Used heavy or specialized machinery or**
644 **equipment for installation of soil and water conservation**
645 **practices purchased at auction.** Used heavy or specialized
646 machinery or equipment used for the installation and
647 implementation of soil and water conservation practices or
648 measures purchased subject to the restrictions provided in
649 Sections 69-27-331 through 69-27-341. Any purchase by the State
650 Soil and Water Conservation Commission under the exemption
651 authorized by this subparagraph shall require advance
652 authorization spread upon the minutes of the commission to include
653 the listing of the item or items authorized to be purchased and
654 the maximum bid authorized to be paid for each item or items.

655 (xxviii) **Hospital lease of equipment or services.**
656 Leases by hospitals of equipment or services if the leases are in
657 compliance with subparagraph (1)(ii).

658 (xxix) **Purchases made pursuant to qualified**
659 **cooperative purchasing agreements.** Purchases made by certified
660 purchasing offices of state agencies or governing authorities
661 under cooperative purchasing agreements previously approved by the
662 Office of Purchasing and Travel and established by or for any
663 municipality, county, parish or state government or the federal
664 government, provided that the notification to potential
665 contractors includes a clause that sets forth the availability of
666 the cooperative purchasing agreement to other governmental
667 entities. Such purchases shall only be made if the use of the
668 cooperative purchasing agreements is determined to be in the best
669 interest of the government entity.

670 (n) **Term contract authorization.** All contracts for the
671 purchase of:

672 (i) All contracts for the purchase of commodities,
673 equipment and public construction (including, but not limited to,
674 repair and maintenance), may be let for periods of not more than
675 sixty (60) months in advance, subject to applicable statutory
676 provisions prohibiting the letting of contracts during specified
677 periods near the end of terms of office. Term contracts for a
678 period exceeding twenty-four (24) months shall also be subject to
679 ratification or cancellation by governing authority boards taking
680 office subsequent to the governing authority board entering the
681 contract.

682 (ii) Bid proposals and contracts may include price
683 adjustment clauses with relation to the cost to the contractor
684 based upon a nationally published industry-wide or nationally
685 published and recognized cost index. The cost index used in a
686 price adjustment clause shall be determined by the Department of
687 Finance and Administration for the state agencies and by the

688 governing board for governing authorities. The bid proposal and
689 contract documents utilizing a price adjustment clause shall
690 contain the basis and method of adjusting unit prices for the
691 change in the cost of such commodities, equipment and public
692 construction.

693 (o) **Purchase law violation prohibition and vendor**
694 **penalty.** No contract or purchase as herein authorized shall be
695 made for the purpose of circumventing the provisions of this
696 section requiring competitive bids, nor shall it be lawful for any
697 person or concern to submit individual invoices for amounts within
698 those authorized for a contract or purchase where the actual value
699 of the contract or commodity purchased exceeds the authorized
700 amount and the invoices therefor are split so as to appear to be
701 authorized as purchases for which competitive bids are not
702 required. Submission of such invoices shall constitute a
703 misdemeanor punishable by a fine of not less than Five Hundred
704 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
705 or by imprisonment for thirty (30) days in the county jail, or
706 both such fine and imprisonment. In addition, the claim or claims
707 submitted shall be forfeited.

708 (p) **Electrical utility petroleum-based equipment**
709 **purchase procedure.** When in response to a proper advertisement
710 therefor, no bid firm as to price is submitted to an electric
711 utility for power transformers, distribution transformers, power
712 breakers, reclosers or other articles containing a petroleum
713 product, the electric utility may accept the lowest and best bid
714 therefor although the price is not firm.

715 (q) **Fuel management system bidding procedure.** Any
716 governing authority or agency of the state shall, before
717 contracting for the services and products of a fuel management or
718 fuel access system, enter into negotiations with not fewer than
719 two (2) sellers of fuel management or fuel access systems for
720 competitive written bids to provide the services and products for

721 the systems. In the event that the governing authority or agency
722 cannot locate two (2) sellers of such systems or cannot obtain
723 bids from two (2) sellers of such systems, it shall show proof
724 that it made a diligent, good-faith effort to locate and negotiate
725 with two (2) sellers of such systems. Such proof shall include,
726 but not be limited to, publications of a request for proposals and
727 letters soliciting negotiations and bids. For purposes of this
728 paragraph (q), a fuel management or fuel access system is an
729 automated system of acquiring fuel for vehicles as well as
730 management reports detailing fuel use by vehicles and drivers, and
731 the term "competitive written bid" shall have the meaning as
732 defined in paragraph (b) of this section. Governing authorities
733 and agencies shall be exempt from this process when contracting
734 for the services and products of a fuel management or fuel access
735 systems under the terms of a state contract established by the
736 Office of Purchasing and Travel.

737 (r) **Solid waste contract proposal procedure.** Before
738 entering into any contract for garbage collection or disposal,
739 contract for solid waste collection or disposal or contract for
740 sewage collection or disposal, which involves an expenditure of
741 more than Fifty Thousand Dollars (\$50,000.00), a governing
742 authority or agency shall issue publicly a request for proposals
743 concerning the specifications for such services which shall be
744 advertised for in the same manner as provided in this section for
745 seeking bids for purchases which involve an expenditure of more
746 than the amount provided in paragraph (c) of this section. Any
747 request for proposals when issued shall contain terms and
748 conditions relating to price, financial responsibility,
749 technology, legal responsibilities and other relevant factors as
750 are determined by the governing authority or agency to be
751 appropriate for inclusion; all factors determined relevant by the
752 governing authority or agency or required by this paragraph (r)
753 shall be duly included in the advertisement to elicit proposals.

754 After responses to the request for proposals have been duly
755 received, the governing authority or agency shall select the most
756 qualified proposal or proposals on the basis of price, technology
757 and other relevant factors and from such proposals, but not
758 limited to the terms thereof, negotiate and enter contracts with
759 one or more of the persons or firms submitting proposals. If the
760 governing authority or agency deems none of the proposals to be
761 qualified or otherwise acceptable, the request for proposals
762 process may be reinitiated. Notwithstanding any other provisions
763 of this paragraph, where a county with at least thirty-five
764 thousand (35,000) nor more than forty thousand (40,000)
765 population, according to the 1990 federal decennial census, owns
766 or operates a solid waste landfill, the governing authorities of
767 any other county or municipality may contract with the governing
768 authorities of the county owning or operating the landfill,
769 pursuant to a resolution duly adopted and spread upon the minutes
770 of each governing authority involved, for garbage or solid waste
771 collection or disposal services through contract negotiations.

772 (s) **Minority set aside authorization.** Notwithstanding
773 any provision of this section to the contrary, any agency or
774 governing authority, by order placed on its minutes, may, in its
775 discretion, set aside not more than twenty percent (20%) of its
776 anticipated annual expenditures for the purchase of commodities
777 from minority businesses; however, all such set-aside purchases
778 shall comply with all purchasing regulations promulgated by the
779 Department of Finance and Administration and shall be subject to
780 bid requirements under this section. Set-aside purchases for
781 which competitive bids are required shall be made from the lowest
782 and best minority business bidder. For the purposes of this
783 paragraph, the term "minority business" means a business which is
784 owned by a majority of persons who are United States citizens or
785 permanent resident aliens (as defined by the Immigration and
786 Naturalization Service) of the United States, and who are Asian,

787 Black, Hispanic or Native American, according to the following
788 definitions:

789 (i) "Asian" means persons having origins in any of
790 the original people of the Far East, Southeast Asia, the Indian
791 subcontinent, or the Pacific Islands.

792 (ii) "Black" means persons having origins in any
793 black racial group of Africa.

794 (iii) "Hispanic" means persons of Spanish or
795 Portuguese culture with origins in Mexico, South or Central
796 America, or the Caribbean Islands, regardless of race.

797 (iv) "Native American" means persons having
798 origins in any of the original people of North America, including
799 American Indians, Eskimos and Aleuts.

800 (t) **Construction punch list restriction.** The
801 architect, engineer or other representative designated by the
802 agency or governing authority that is contracting for public
803 construction or renovation may prepare and submit to the
804 contractor only one (1) preliminary punch list of items that do
805 not meet the contract requirements at the time of substantial
806 completion and one (1) final list immediately before final
807 completion and final payment.

808 (u) **Purchase authorization clarification.** Nothing in
809 this section shall be construed as authorizing any purchase not
810 authorized by law.

811 **SECTION 3.** Section 37-151-7, Mississippi Code of 1972, is
812 amended as follows:

813 37-151-7. The annual allocation to each school district for
814 the operation of the adequate education program shall be
815 determined as follows:

816 (1) Computation of the basic amount to be included for
817 current operation in the adequate education program. The
818 following procedure shall be followed in determining the annual
819 allocation to each school district:

820 (a) **Determination of average daily attendance.** During
821 months two (2) and three (3) of the current school year, the
822 average daily attendance of a school district shall be computed,
823 or the average daily attendance for the prior school year shall be
824 used, whichever is greater. For purposes of this calculation,
825 "current" school year shall mean the school year for which
826 appropriations are made by the Legislature, and "prior" school
827 year shall mean the school year immediately preceding the year for
828 which appropriations are made by the Legislature. The district's
829 average daily attendance shall be computed and currently
830 maintained in accordance with regulations promulgated by the State
831 Board of Education.

832 (b) **Determination of base student cost.** The State
833 Board of Education, on or before August 1, with adjusted estimate
834 no later than January 2, shall annually submit to the Legislative
835 Budget Office and the Governor a proposed base student cost
836 adequate to provide the following cost components of educating a
837 pupil in an average school district meeting Level III
838 accreditation standards required by the Commission on School
839 Accreditation: (i) Instructional Cost; (ii) Administrative Cost;
840 (iii) Operation and Maintenance of Plant; and (iv) Ancillary
841 Support Cost. The department shall utilize a statistical
842 methodology which considers such factors as, but not limited to,
843 (i) school size; (ii) assessed valuation per pupil; (iii) the
844 percentage of students receiving free lunch; (iv) the local
845 district maintenance tax levy; (v) other local school district
846 revenues; and (vi) the district's accreditation level, in the
847 selection of the representative Mississippi school districts for
848 which cost information shall be obtained for each of the above
849 listed cost areas.

850 For the instructional cost component, the department shall
851 determine the instructional cost of each of the representative
852 school districts selected above, excluding instructional cost of

853 self-contained special education programs and vocational education
854 programs, and the average daily attendance in the selected school
855 districts. The instructional cost is then totaled and divided by
856 the total average daily attendance for the selected school
857 districts to yield the instructional cost component. For the
858 administrative cost component, the department shall determine the
859 administrative cost of each of the representative school districts
860 selected above, excluding administrative cost of self-contained
861 special education programs and vocational education programs, and
862 the average daily attendance in the selected school districts.
863 The administrative cost is then totaled and divided by the total
864 average daily attendance for the selected school districts to
865 yield the administrative cost component. For the plant and
866 maintenance cost component, the department shall determine the
867 plant and maintenance cost of each of the representative school
868 districts selected above, excluding plant and maintenance cost of
869 self-contained special education programs and vocational education
870 programs, and the average daily attendance in the selected school
871 districts. The plant and maintenance cost is then totaled and
872 divided by the total average daily attendance for the selected
873 school districts to yield the plant and maintenance cost
874 component. For the ancillary support cost component, the
875 department shall determine the ancillary support cost of each of
876 the representative school districts selected above, excluding
877 ancillary support cost of self-contained special education
878 programs and vocational education programs, and the average daily
879 attendance in the selected school districts. The ancillary
880 support cost is then totaled and divided by the total average
881 daily attendance for the selected school districts to yield the
882 ancillary support cost component. The total base cost for each
883 year shall be the sum of the instructional cost component,
884 administrative cost component, plant and maintenance cost
885 component and ancillary support cost component, and any estimated

886 adjustments for additional state requirements as determined by the
887 State Board of Education. Provided, however, that the base
888 student cost in fiscal year 1998 shall be Two Thousand Six Hundred
889 Sixty-four Dollars (\$2,664.00).

890 (c) **Determination of the basic adequate education**
891 **program cost.** The basic amount for current operation to be
892 included in the Mississippi Adequate Education Program for each
893 school district shall be computed as follows:

894 Multiply the average daily attendance of the district by the
895 base student cost as established by the Legislature, which yields
896 the total base program cost for each school district.

897 (d) **Adjustment to the base student cost for at-risk**
898 **pupils.** The amount to be included for at-risk pupil programs for
899 each school district shall be computed as follows: Multiply the
900 base student cost for the appropriate fiscal year as determined
901 under paragraph (b) by five percent (5%), and multiply that
902 product by the number of pupils participating in the federal free
903 school lunch program in such school district, which yields the
904 total adjustment for at-risk pupil programs for such school
905 district.

906 (e) **Add-on program cost.** The amount to be allocated to
907 school districts in addition to the adequate education program
908 cost for add-on programs for each school district shall be
909 computed as follows:

910 (i) Transportation cost shall be the amount
911 allocated to such school district for the operational support of
912 the district transportation system from state funds.

913 (ii) Vocational or technical education program
914 cost shall be the amount allocated to such school district from
915 state funds for the operational support of such programs.

916 (iii) Special education program cost shall be the
917 amount allocated to such school district from state funds for the
918 operational support of such programs.

919 (iv) Gifted education program cost shall be the
920 amount allocated to such school district from state funds for the
921 operational support of such programs.

922 (v) Alternative school program cost shall be the
923 amount allocated to such school district from state funds for the
924 operational support of such programs.

925 (vi) Extended school year programs shall be the
926 amount allocated to school districts for those programs authorized
927 by law which extend beyond the normal school year.

928 (vii) University-based programs shall be the
929 amount allocated to school districts for those university-based
930 programs for handicapped children as defined and provided for in
931 Section 37-23-131 et seq., Mississippi Code of 1972.

932 (viii) Bus driver training programs shall be the
933 amount provided for those driver training programs as provided for
934 in Section 37-41-1, Mississippi Code of 1972.

935 The sum of the items listed above (i) transportation, (ii)
936 vocational or technical education, (iii) special education, (iv)
937 gifted education, (v) alternative school, (vi) extended school
938 year, (vii) university-based, and (viii) bus driver training shall
939 yield the add-on cost for each school district.

940 (f) **Total projected adequate education program cost.**

941 The total Mississippi Adequate Education Program Cost shall be the
942 sum of the total basic adequate education program cost (paragraph
943 (c)), and the adjustment to the base student cost for at-risk
944 pupils (paragraph (d)) for each school district.

945 (g) **Supplemental grant to school districts.** In
946 addition to the adequate education program grant, the State
947 Department of Education shall annually distribute an additional
948 amount as follows: Multiply the base student cost for the
949 appropriate fiscal year as determined under paragraph (b) by
950 thirteen one-hundredths percent (.13%) and multiply that product
951 by the average daily attendance of each school district. Such

952 grant shall not be subject to the local revenue requirement
953 provided in subsection (2).

954 (2) **Computation of the required local revenue in support of**
955 **the adequate education program.** The amount that each district
956 shall provide toward the cost of the adequate education program
957 shall be calculated as follows:

958 (a) The State Board of Education shall certify to each
959 school district that twenty-eight (28) mills, less the estimated
960 amount of the yield of the School Ad Valorem Tax Reduction Fund
961 grants as determined by the State Department of Education, is the
962 millage rate required to provide the district required local
963 effort for that year, or twenty-seven percent (27%) of the basic
964 adequate education program cost for such school district as
965 determined under subsection (c), whichever is a lesser amount. In
966 the case of an agricultural high school the millage requirement
967 shall be set at a level which generates an equitable amount per
968 pupil to be determined by the State Board of Education.

969 (b) The State Board of Education shall determine (i)
970 the total assessed valuation of nonexempt property for school
971 purposes in each school district; (ii) assessed value of exempt
972 property owned by homeowners aged sixty-five (65) or older or
973 disabled as defined in Section 27-33-67(2), Mississippi Code of
974 1972; (iii) the school district's tax loss from exemptions
975 provided to applicants under the age of sixty-five (65) and not
976 disabled as defined in Section 27-33-67(1), Mississippi Code of
977 1972; and (iv) the school district's homestead reimbursement
978 revenues.

979 (c) The amount of the total adequate education program
980 funding which shall be contributed by each school district shall
981 be the sum of the ad valorem receipts generated by the millage
982 required under this subsection plus the following local revenue
983 sources for the appropriate fiscal year which are or may be
984 available for current expenditure by the school district:

985 One hundred percent (100%) of Grand Gulf income as prescribed
986 in Section 27-35-309.

987 **(3) Computation of the required state effort in support of**
988 **the adequate education program.**

989 (a) The required state effort in support of the
990 adequate education program shall be determined by subtracting the
991 sum of the required local tax effort as set forth in subsection
992 (2)(a) of this section and the other local revenue sources as set
993 forth in subsection (2)(c) of this section in an amount not to
994 exceed twenty-seven percent (27%) of the total projected adequate
995 education program cost as set forth in subsection (1)(f) of this
996 section from the total projected adequate education program cost
997 as set forth in subsection (1)(f) of this section.

998 (b) Provided, however, that in fiscal year 1998 and in
999 the fiscal year in which the adequate education program is fully
1000 funded by the Legislature, any increase in the said state
1001 contribution, including the supplemental grant to school districts
1002 provided under subsection (1)(g), to any district calculated under
1003 this section shall be not less than eight percent (8%) in excess
1004 of the amount received by said district from state funds for the
1005 fiscal year immediately preceding. For purposes of this paragraph
1006 (b), state funds shall include minimum program funds less the
1007 add-on programs, state Uniform Millage Assistance Grant funds,
1008 Education Enhancement Funds appropriated for Uniform Millage
1009 Assistance Grants and state textbook allocations, and State
1010 General Funds allocated for textbooks.

1011 (c) If the appropriation is less than full funding for
1012 fiscal year 2003, allocations for state contributions to school
1013 districts in support of the adequate education program will be
1014 determined by the State Department of Education in the following
1015 manner:

1016 (i) Calculation of the full funding amount under
1017 this chapter, with proportionate reductions as required by the
1018 appropriation level.

1019 (ii) Calculation of the amount equal to the state
1020 funds allocated to school districts for fiscal year 2002 plus the
1021 estimated amount to fund the adequate education program salary
1022 schedule for fiscal year 2003. For purposes of this item (ii),
1023 state funds shall be those described in paragraph (b) and an
1024 amount equal to the allocation for the adequate education program
1025 in fiscal year 2002, plus any additional amount required to
1026 satisfy fiscal year 2003 pledges in accordance with paragraphs
1027 (d), (e) and (f) of subsection (5) of this section. If a school
1028 district's fiscal year 2003 pledge is different than the pledge
1029 amount for fiscal year 2002, the district shall receive an amount
1030 equal to the fiscal year 2003 pledge or the amount of funds
1031 calculated under the adequate education formula for fiscal year
1032 2002 before any pledge guarantee for fiscal year 2002, whichever
1033 is greater. If the pledge is no longer in effect, the district
1034 shall receive the amount of funds calculated under the formula for
1035 fiscal year 2002 before any pledge guarantee for fiscal year 2002.

1036 (iii) The portion of any district's allocation
1037 calculated in item (i) of this paragraph which exceeds amounts as
1038 calculated in item (ii) shall be reduced by an amount not to
1039 exceed twenty-one percent (21%). The amount of funds generated by
1040 this reduction of funds shall be redistributed proportionately
1041 among those districts receiving insufficient funds to meet the
1042 amount calculated in item (ii). In no case may any district
1043 receive funds in an amount greater than the amount that the
1044 district would have received under full funding of the program for
1045 fiscal year 2003.

1046 (d) If the school board of any school district shall
1047 determine that it is not economically feasible or practicable to
1048 operate any school within the district for the full one hundred

1049 eighty (180) days required for a school term of a scholastic year
1050 as required in Section 37-13-63, Mississippi Code of 1972, due to
1051 an enemy attack, a manmade, technological or natural disaster in
1052 which the Governor has declared a disaster emergency under the
1053 laws of this state or the President of the United States has
1054 declared an emergency or major disaster to exist in this state,
1055 said school board may notify the State Department of Education of
1056 such disaster and submit a plan for altering the school term. If
1057 the State Board of Education finds such disaster to be the cause
1058 of the school not operating for the contemplated school term and
1059 that such school was in a school district covered by the
1060 Governor's or President's disaster declaration, it may permit said
1061 school board to operate the schools in its district for less than
1062 one hundred eighty (180) days and, in such case, the State
1063 Department of Education shall not reduce the state contributions
1064 to the adequate education program allotment for such district,
1065 because of the failure to operate said schools for one hundred
1066 eighty (180) days.

1067 (4) If during the year for which adequate education program
1068 funds are appropriated, any school district experiences a three
1069 percent (3%) or greater increase in average daily attendance
1070 during the second and third month over the preceding year's second
1071 and third month, an additional allocation of adequate education
1072 program funds calculated in the following manner shall be granted
1073 to that district, using any additional funds available to the
1074 Department of Education that exceed the amount of funds due to the
1075 school districts under the basic adequate education program
1076 distribution as provided for in this chapter:

1077 (a) Determine the percentage increase in average daily
1078 attendance for the second and third months of the year for which
1079 adequate education program funds are appropriated over the
1080 preceding year's second and third month average daily attendance.

1081 (b) For those districts that have a three percent (3%)
1082 or greater increase as calculated in paragraph (a) of this
1083 subsection, multiply the total increase in students in average
1084 daily attendance for the second and third months of the year for
1085 which adequate education program funds are appropriated over the
1086 preceding year's second and third month average daily attendance
1087 times the base student cost used in the appropriation.

1088 (c) Subtract the percentage of the district's local
1089 contribution arrived at in subsection (2) of this section from the
1090 amount calculated in paragraph (b) of this subsection. The
1091 remainder is the additional allocation in adequate education
1092 program funds for that district.

1093 If the funds available to the Department of Education are not
1094 sufficient to fully fund the additional allocations to school
1095 districts eligible for those allocations, then the department
1096 shall prorate the available funds among the eligible school
1097 districts, using the same percentage of the total funds that the
1098 school district would have received if the allocations were fully
1099 funded.

1100 This subsection (4) shall stand repealed on July 1, 2004.

1101 (5) The Interim School District Capital Expenditure Fund is
1102 hereby established in the State Treasury which shall be used to
1103 distribute any funds specifically appropriated by the Legislature
1104 to such fund to school districts entitled to increased allocations
1105 of state funds under the adequate education program funding
1106 formula prescribed in Sections 37-151-3 through 37-151-7,
1107 Mississippi Code of 1972, until such time as the said adequate
1108 education program is fully funded by the Legislature. The
1109 following percentages of the total state cost of increased
1110 allocations of funds under the adequate education program funding
1111 formula shall be appropriated by the Legislature into the Interim
1112 School District Capital Expenditure Fund to be distributed to all
1113 school districts under the formula: Nine and two-tenths percent

1114 (9.2%) shall be appropriated in fiscal year 1998, twenty percent
1115 (20%) shall be appropriated in fiscal year 1999, forty percent
1116 (40%) shall be appropriated in fiscal year 2000, sixty percent
1117 (60%) shall be appropriated in fiscal year 2001, eighty percent
1118 (80%) shall be appropriated in fiscal year 2002, and one hundred
1119 percent (100%) shall be appropriated in fiscal year 2003 into the
1120 State Adequate Education Program Fund created in subsection (4).
1121 Until July 1, 2002, such money shall be used by school districts
1122 for the following purposes:

1123 (a) Purchasing, erecting, repairing, equipping,
1124 remodeling and enlarging school buildings and related facilities,
1125 including gymnasiums, auditoriums, lunchrooms, vocational training
1126 buildings, libraries, school barns and garages for transportation
1127 vehicles, school athletic fields and necessary facilities
1128 connected therewith, and purchasing land therefor. Any such
1129 capital improvement project by a school district shall be approved
1130 by the State Board of Education, and based on an approved
1131 long-range plan. The State Board of Education shall promulgate
1132 minimum requirements for the approval of school district capital
1133 expenditure plans.

1134 (b) Providing necessary water, light, heating, air
1135 conditioning, and sewerage facilities for school buildings, and
1136 purchasing land therefor.

1137 (c) Paying debt service on existing capital improvement
1138 debt of the district or refinancing outstanding debt of a district
1139 if such refinancing will result in an interest cost savings to the
1140 district.

1141 (d) From and after October 1, 1997, through June 30,
1142 1998, pursuant to a school district capital expenditure plan
1143 approved by the State Department of Education, a school district
1144 may pledge such funds until July 1, 2002, plus funds provided for
1145 in paragraph (e) of this subsection (5) that are not otherwise
1146 permanently pledged under such paragraph (e) to pay all or a

1147 portion of the debt service on debt issued by the school district
1148 under Sections 37-59-1 through 37-59-45, 37-59-101 through
1149 37-59-115, 37-7-351 through 37-7-359, 37-41-89 through 37-41-99,
1150 37-7-301, 37-7-302 and 37-41-81, Mississippi Code of 1972, or debt
1151 issued by boards of supervisors for agricultural high schools
1152 pursuant to Section 37-27-65, Mississippi Code of 1972, or
1153 lease-purchase contracts entered into pursuant to Section 31-7-13,
1154 Mississippi Code of 1972, or to retire or refinance outstanding
1155 debt of a district, if such pledge is accomplished pursuant to a
1156 written contract or resolution approved and spread upon the
1157 minutes of an official meeting of the district's school board or
1158 board of supervisors. It is the intent of this provision to allow
1159 school districts to irrevocably pledge their Interim School
1160 District Capital Expenditure Fund allotments as a constant stream
1161 of revenue to secure a debt issued under the foregoing code
1162 sections. To allow school districts to make such an irrevocable
1163 pledge, the state shall take all action necessary to ensure that
1164 the amount of a district's Interim School District Capital
1165 Expenditure Fund allotments shall not be reduced below the amount
1166 certified by the department or the district's total allotment
1167 under the Interim Capital Expenditure Fund if fully funded, so
1168 long as such debt remains outstanding.

1169 (e) From and after October 1, 1997, through June 30,
1170 1998, in addition to any other authority a school district may
1171 have, any school district may issue State Aid Capital Improvement
1172 Bonds secured in whole by a continuing annual pledge of any
1173 Mississippi Adequate Education Program funds available to the
1174 district, in an amount not to exceed One Hundred Sixty Dollars
1175 (\$160.00) per pupil based on the latest completed average daily
1176 attendance count certified by the department prior to the issuance
1177 of the bonds. Such State Aid Capital Improvement Bonds may be
1178 issued for the purposes enumerated in subsections (a), (b), (c)
1179 and (g) of this section. Prior to issuing such bonds, the school

1180 board of the district shall adopt a resolution declaring the
1181 necessity for and its intention of issuing such bonds and
1182 borrowing such money, specifying the approximate amount to be so
1183 borrowed, how such money is to be used and how such indebtedness
1184 is to be evidenced. Any capital improvement project financed with
1185 State Aid Capital Improvement Bonds shall be approved by the
1186 department, and based on an approved long-range plan. The State
1187 Board of Education shall promulgate minimum requirements for the
1188 approval of such school district capital expenditure plans. The
1189 State Board of Education shall not approve any capital expenditure
1190 plan for a pledge of funds under this paragraph unless it
1191 determines (i) that the quality of instruction in such district
1192 will not be reduced as a result of this pledge, and (ii) the
1193 district has other revenue available to attain and maintain at
1194 least Level III accreditation.

1195 A district issuing State Aid Capital Improvement Bonds may
1196 pledge for the repayment of such bonds all funds received by the
1197 district from the state, in an amount not to exceed One Hundred
1198 Sixty Dollars (\$160.00) per pupil in average daily attendance in
1199 the school district as set forth above, and not otherwise
1200 permanently pledged under paragraph (d) of this subsection or
1201 under Section 37-61-33(2)(d), Mississippi Code of 1972. The
1202 district's school board shall specify by resolution the amount of
1203 state funds, which are being pledged by the district for the
1204 repayment of the State Aid Capital Improvement Bonds. Once such a
1205 pledge is made to secure the bonds, the district shall notify the
1206 department of such pledge. Upon making such a pledge, the school
1207 district may request the department which may agree to irrevocably
1208 transfer a specified amount or percentage of the district's state
1209 revenue pledged to repay the district's State Aid Capital
1210 Improvement Bonds directly to a state or federally chartered bank
1211 serving as a trustee or paying agent on such bonds for the payment
1212 of all or portion of such State Aid Capital Improvement Bonds.

1213 Such instructions shall be incorporated into a resolution by the
1214 school board for the benefit of holders of the bonds and may
1215 provide that such withholding and transfer of such other available
1216 funds shall be made only upon notification by a trustee or paying
1217 agent on such bonds that the amounts available to pay such bonds
1218 on any payment date will not be sufficient. It is the intent of
1219 this provision to allow school districts to irrevocably pledge a
1220 certain, constant stream of revenue as security for State Aid
1221 Capital Improvement Bonds issued hereunder. To allow school
1222 districts to make such an irrevocable pledge, the state shall take
1223 all action necessary to ensure that the amount of a district's
1224 state revenues up to an amount equal to One Hundred Sixty Dollars
1225 (\$160.00) per pupil as set forth above which have been pledged to
1226 repay debt as set forth herein shall not be reduced so long as any
1227 State Aid Capital Improvement Bonds are outstanding.

1228 Any such State Aid Capital Improvement bonds shall mature as
1229 determined by the district's school bond over a period not to
1230 exceed twenty (20) years. Such bonds shall not bear a greater
1231 overall maximum interest rate to maturity than that allowed in
1232 Section 75-17-101, Mississippi Code of 1972. The further details
1233 and terms of such bonds shall be as determined by the school board
1234 of the district.

1235 The provisions of this subsection shall be cumulative and
1236 supplemental to any existing funding programs or other authority
1237 conferred upon school districts or school boards. Debt of a
1238 school district secured in whole by a pledge of revenue pursuant
1239 to this section shall not be subject to any debt limitation.

1240 For purposes of this paragraph (e), "State Aid Capital
1241 Improvement Bond" shall mean any bond, note, or other certificate
1242 of indebtedness issued by a school district under the provisions
1243 hereof.

1244 This paragraph (e) shall stand repealed from and after June
1245 30, 1998.

1246 (f) As an alternative to the authority granted under
1247 paragraph (e), a school district, in its discretion, may authorize
1248 the State Board of Education to withhold an amount of the
1249 district's adequate education program allotment equal to up to One
1250 Hundred Sixty Dollars (\$160.00) per student in average daily
1251 attendance in the district to be allocated to the State Public
1252 School Building Fund to the credit of such school district. A
1253 school district may choose the option provided under this
1254 paragraph (e) or paragraph (f), but not both. In addition to the
1255 grants made by the state pursuant to Section 37-47-9, a school
1256 district shall be entitled to grants based on the allotments to
1257 the State Public School Building Fund credited to such school
1258 district under this paragraph. This paragraph (f) shall stand
1259 repealed from and after June 30, 1998.

1260 (g) The State Board of Education may authorize the
1261 school district to expend not more than twenty percent (20%) of
1262 its annual allotment of such funds or Twenty Thousand Dollars
1263 (\$20,000.00), whichever is greater, for technology needs of the
1264 school district, including computers, software,
1265 telecommunications, cable television, interactive video, film
1266 low-power television, satellite communications, microwave
1267 communications, technology-based equipment installation and
1268 maintenance, and the training of staff in the use of such
1269 technology-based instruction. Any such technology expenditure
1270 shall be reflected in the local district technology plan approved
1271 by the State Board of Education under Section 37-151-17,
1272 Mississippi Code of 1972.

1273 (h) To the extent a school district has not utilized
1274 twenty percent (20%) of its annual allotment for technology
1275 purposes under paragraph (g), a school district may expend not
1276 more than twenty percent (20%) of its annual allotment or Twenty
1277 Thousand Dollars (\$20,000.00), whichever is greater, for
1278 instructional purposes. The State Board of Education may

1279 authorize a school district to expend more than said twenty
1280 percent (20%) of its annual allotment for instructional purposes
1281 if it determines that such expenditures are needed for
1282 accreditation purposes.

1283 (i) The State Department of Education or the State
1284 Board of Education may require that any project commenced pursuant
1285 to this act with an estimated project cost of more than
1286 Twenty-five Million Dollars (\$25,000,000.00) be done * * *
1287 pursuant to program management of the process with respect to
1288 design and construction. No project management of the process
1289 with respect to design and construction shall be used for any
1290 project with an estimated project cost of less than Twenty-five
1291 Million Dollars (\$25,000,000.00). Any individuals, partnerships,
1292 companies or other entities acting as a program manager on behalf
1293 of a local school district and performing program management
1294 services for projects covered under this subsection shall be
1295 approved by the State Department of Education.

1296 Any interest accruing on any unexpended balance in the
1297 Interim School District Capital Expenditure Fund shall be invested
1298 by the State Treasurer and placed to the credit of each school
1299 district participating in such fund in its proportionate share.

1300 The provisions of this subsection (5) shall be cumulative and
1301 supplemental to any existing funding programs or other authority
1302 conferred upon school districts or school boards.

1303 **SECTION 4.** This act shall take effect and be in force from
1304 and after July 1, 2004.